

AMENDED IN ASSEMBLY APRIL 18, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1376**

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**Introduced by Assembly Member Roger Hernández**

February 22, 2013

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An act to amend Sections 11018 and, 11435.30, *11435.35*, *11435.40*, and *11435.55* of, to repeal and add Section ~~11435.35~~ of, and to repeal Sections ~~11435.40~~, ~~11435.45~~, ~~11435.50~~, and ~~11435.55~~ of, *11435.45* and *11435.50* of, the Government Code, and to amend Sections 4600 and 4620 of the Labor Code, relating to state government.

LEGISLATIVE COUNSEL'S DIGEST

AB 1376, as amended, Roger Hernández. Administrative adjudication: language assistance.

Existing law requires certain state agencies to provide language assistance in adjudicative proceedings. Existing law requires the State Personnel Board to establish, maintain, administer, and publish annually for these purposes an updated list of certified administrative hearing interpreters and medical examination interpreters it has determined meet certain minimum standards. Existing law requires the Department of Human Resources to designate the languages for which certification shall be established and to establish and charge fees for applications to take interpreter examinations and for renewal of certifications. Existing law authorizes the Department of Human Resources to remove the name of a person from the list of certified interpreters if any specified conditions occurs. Existing law authorizes a hearing agency to provisionally qualify and use another interpreter if a certified interpreter, as specified, cannot be present at the hearing.

~~This bill would instead require each agency subject to the language assistance requirements, as specified, to determine the qualifications of interpreters in its proceedings, and would allow the Administrative Director of the Division of Workers' Compensation California Department of Human Resources, until December 31, 2018, to establish, maintain, administer, and publish annually an updated~~ the list of certified administrative hearing *and medical examination* interpreters, as specified. This bill would require a reasonable fee to be collected from each interpreter seeking certification, to cover the reasonable regulatory costs of administering the program. The bill would ~~repeal the above mentioned provisions related to the Department of Human Resources and the provision that authorizes a hearing agency to provisionally qualify and use another~~ *modify the conditions under which an interpreter who is not included on one of the lists of certified interpreters may act as an interpreter.*

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 11018 of the Government Code is  
2 amended to read:  
3 11018. Each state agency that is authorized by any law to  
4 conduct administrative hearings but is not subject to Chapter 5  
5 (commencing with Section 11500) shall nonetheless comply with  
6 Sections 11435.20 ~~and~~, 11435.25, *and 11435.55* relative to the  
7 furnishing of language assistance at the hearing.  
8 SEC. 2. ~~Section 11435.30 of the Government Code is amended~~  
9 ~~to read:~~  
10 ~~11435.30. (a) The Administrative Director of the Division of~~  
11 ~~Workers' Compensation may establish, maintain, administer, and~~  
12 ~~publish annually an updated list of certified administrative hearing~~  
13 ~~interpreters who, based on testing by an independent organization~~  
14 ~~designated by the administrative director, have been determined~~  
15 ~~to meet the minimum standards in interpreting skills and linguistic~~  
16 ~~abilities necessary for purposes of administrative hearings~~  
17 ~~conducted pursuant to proceedings of the Workers' Compensation~~  
18 ~~Appeals Board. The independent testing organization shall not~~  
19 ~~have any financial interest in the training of interpreters or in the~~  
20 ~~employment of interpreters for administrative hearings.~~

~~(b) The Administrative Director of the Division of Workers' Compensation may establish, maintain, administer, and publish annually an updated list of certified medical examination interpreters who, based on testing by an independent organization designated by the administrative director, have been determined to meet the minimum standards in interpreting skills and linguistic abilities in languages for purposes of medical examinations conducted pursuant to proceedings of the Workers' Compensation Appeals Board, and medical examinations conducted pursuant to Division 4 (commencing with Section 3200) of the Labor Code. The independent testing organization shall not have any financial interest in the training of interpreters or in the employment of interpreters for medical examinations.~~

~~(c) A fee, as determined by the administrative director, shall be collected from each interpreter seeking certification. The fee shall not exceed the reasonable regulatory costs of administering the testing and certification program and of publishing the list of certified administrative hearing interpreters or certified medical examination interpreters on the Division of Workers' Compensation Internet Web site.~~

~~(d) The Legislature finds and declares that the services described in this section are of such a special and unique nature that they may be contracted out pursuant to paragraph (3) of subdivision (b) of Section 19130. The Legislature further finds and declares that the services described in this section are a new state function pursuant to paragraph (2) of subdivision (b) of Section 19130.~~

*SEC. 2. Section 11435.30 of the Government Code is amended to read:*

*11435.30. (a) The State Personnel Board Until December 31, 2018, the California Department of Human Resources shall establish, maintain, administer, and publish annually an updated the list of certified administrative hearing interpreters it has determined meet the minimum standards in interpreting skills and linguistic abilities in languages designated pursuant to Section 11435.40. 11435.40, as of December 31, 2013. Any interpreter so listed may be examined by each employing agency to determine the interpreter's knowledge of the employing agency's technical program terminology and procedures.*

(b) Court interpreters certified pursuant to Section 68562, and interpreters listed on the State Personnel Board's recommended lists of court and administrative hearing interpreters prior to July 1, 1993, shall be deemed certified for purposes of ~~this section~~ subdivision (a).

(c) (1) ~~In addition to the certification procedure provided pursuant to subdivision (a), the~~ The Administrative Director of the Division of Workers' Compensation may establish, maintain, administer, and publish annually an updated list of certified administrative hearing interpreters who, based on testing by an independent organization designated by the administrative director, have been determined to meet the minimum standards in interpreting skills and linguistic abilities in languages designated pursuant to Section 11435.40, for purposes of administrative hearings conducted pursuant to proceedings of the Workers' Compensation Appeals Board. The independent testing organization shall have no financial interest in the training of interpreters or in the employment of interpreters for administrative hearings.

(2) ~~(A)~~ A fee, as determined by the administrative director, shall be collected from each interpreter seeking certification. The fee shall not exceed the reasonable regulatory costs of administering the testing and certification program and of publishing the list of certified administrative hearing interpreters on the Division of Workers' Compensation' Internet Web site.

~~(B)~~

(d) The Legislature finds and declares that the services described in this section are of such a special and unique nature that they may be contracted out pursuant to paragraph (3) of subdivision (b) of Section 19130. The Legislature further finds and declares that the services described in this section are a new state function pursuant to paragraph (2) of subdivision (b) of Section 19130.

~~SEC. 3. Section 11435.35 of the Government Code is repealed.~~

~~SEC. 4. Section 11435.35 is added to the Government Code, to read:~~

~~11435.35. (a) Each agency subject to the language assistance requirements of this article shall determine the qualifications of interpreters in its proceedings. The agency may require interpreters to take an examination, demonstrate certification by an independent organization, or take an oath that any interpretation provided is~~

1 accurate and complete and that the interpreter is without bias in  
2 the proceeding. For interpreters used in administrative hearings,  
3 the presiding officer may verify the interpreter's qualifications and  
4 administer oaths on the record of the proceeding.

5 (b) ~~The Legislature finds and declares that the services described~~  
6 ~~in this section may be contracted out pursuant to paragraphs (3)~~  
7 ~~and (10) of subdivision (b) of Section 19130 as either highly~~  
8 ~~specialized and unique or urgent, temporary or occasional, or both.~~

9 *SEC. 3. Section 11435.35 of the Government Code is amended*  
10 *to read:*

11 11435.35. (a) ~~The State Personnel Board California~~  
12 ~~Department of Human Resources shall establish, maintain,~~  
13 ~~administer, and publish annually, an updated the~~ list of certified  
14 medical examination interpreters it has determined meet the  
15 minimum standards in interpreting skills and linguistic abilities in  
16 languages designated pursuant to Section ~~11435.40~~. *11435.40, as*  
17 *of December 31, 2013.*

18 (b) Court interpreters certified pursuant to Section 68562 and  
19 administrative hearing interpreters certified pursuant to Section  
20 11435.30 shall be deemed certified for purposes of this section.

21 (c) (1) ~~In addition to the certification procedure provided~~  
22 ~~pursuant to subdivision (a), the~~ *The* Administrative Director of the  
23 Division of Workers' Compensation may establish, maintain,  
24 administer, and publish annually an updated list of certified medical  
25 examination interpreters who, based on testing by an independent  
26 organization designated by the administrative director, have been  
27 determined to meet the minimum standards in interpreting skills  
28 and linguistic abilities in languages designated pursuant to Section  
29 11435.40, for purposes of medical examinations conducted  
30 pursuant to proceedings of the Workers' Compensation Appeals  
31 Board, and medical examinations conducted pursuant to Division  
32 4 (commencing with Section 3200) of the Labor Code. The  
33 independent testing organization shall have no financial interest  
34 in the training of interpreters or in the employment of interpreters  
35 for administrative hearings.

36 (2) ~~(A)~~ A fee, as determined by the administrative director,  
37 shall be collected from each interpreter seeking certification. The  
38 fee shall not exceed the reasonable regulatory costs of  
39 administering the testing and certification program and of

1 publishing the list of certified medical examination interpreters on  
2 the Division of Workers' Compensation's Internet Web site.

3 ~~(B)~~

4 (d) The Legislature finds and declares that the services described  
5 in this section are of such a special and unique nature that they  
6 may be contracted out pursuant to paragraph (3) of subdivision  
7 (b) of Section 19130. The Legislature further finds and declares  
8 that the services described in this section are a new state function  
9 pursuant to paragraph (2) of subdivision (b) of Section 19130.

10 ~~SEC. 5. Section 11435.40 of the Government Code is repealed.~~

11 *SEC. 4. Section 11435.40 of the Government Code is amended*  
12 *to read:*

13 11435.40. (a) ~~The Department of Human Resources~~  
14 *Administrative Director of the Division of Workers' Compensation*  
15 shall designate the languages for which certification shall be  
16 established under Sections 11435.30 and 11435.35. The languages  
17 designated shall include, but not be limited to, Spanish, Tagalog,  
18 Arabic, Cantonese, Japanese, Korean, Portuguese, and Vietnamese  
19 until the ~~Department of Human Resources~~ *Administrative Director*  
20 finds that there is an insufficient need for interpreting assistance  
21 in these languages.

22 (b) The language designations shall be based on the following:

23 (1) The language needs of non-English-speaking persons  
24 appearing before the administrative agencies, as determined by  
25 consultation with the agencies.

26 (2) The cost of developing a language examination.

27 (3) The availability of experts needed to develop a language  
28 examination.

29 (4) Other information the department deems relevant.

30 ~~SEC. 6.~~

31 *SEC. 5. Section 11435.45 of the Government Code is repealed.*

32 ~~SEC. 7.~~

33 *SEC. 6. Section 11435.50 of the Government Code is repealed.*

34 ~~SEC. 8. Section 11435.55 of the Government Code is repealed.~~

35 *SEC. 7. Section 11435.55 of the Government Code is amended*  
36 *to read:*

37 11435.55. (a) An interpreter used in a hearing shall be ~~certified~~  
38 ~~pursuant to Section 11435.30. However, if qualified. A certified~~  
39 ~~interpreter on any of the lists pursuant to Section 11435.30 is~~  
40 *presumptively qualified. If an interpreter certified on any list made*

1 pursuant to Section 11435.30 cannot be present at the hearing, the  
2 hearing ~~agency examiner~~ shall have discretionary authority to  
3 provisionally qualify and use another ~~interpreter~~. *interpreter*  
4 *pursuant to subdivision (c).*

5 (b) An interpreter used in a medical examination shall be  
6 ~~certified pursuant to Section 11435.35. However, if qualified. A~~  
7 *certified interpreter on any of the lists pursuant to Section 11435.35*  
8 *is presumptively qualified. If an interpreter certified on any list*  
9 *made pursuant to Section 11435.35 cannot be present at the medical*  
10 *examination, the physician agency shall have discretionary*  
11 *authority to provisionally may qualify and use another interpreter*  
12 *pursuant to subdivision (c) if that fact is noted in the record of the*  
13 *medical evaluation.*

14 (c) *An interpreter not named on a list pursuant to Section*  
15 *11435.35 may be provisionally qualified if both of the following*  
16 *facts are found:*

17 (1) *Good cause exists to appoint a nonlisted interpreter.*  
18 (2) *The interpreter is qualified to interpret the proceedings. In*  
19 *determining whether the interpreter is qualified, the hearing*  
20 *examiner or agency, as appropriate, shall consider all of the*  
21 *following:*

22 (A) *Any interpreter examination or evaluation taken by the*  
23 *interpreter and the results of this examination or evaluation.*

24 (B) *The interpreter's general education, language training,*  
25 *interpreting training, and translation training.*

26 (C) *The interpreter's language teaching experience.*

27 (D) *The interpreter's prior experience interpreting in court*  
28 *proceedings, administrative hearings, medical examinations, and*  
29 *other settings.*

30 (E) *The interpreter's experience with written translation.*

31 (F) *Any training in professional ethics.*

32 (G) *The interpreter's training in applicable terminology.*

33 (d) *If any party objects to the qualifications of the proposed,*  
34 *the objection shall be noted on the record of the hearing or*  
35 *evaluation.*

36 ~~SEC. 9.~~

37 SEC. 8. Section 4600 of the Labor Code is amended to read:

38 4600. (a) Medical, surgical, chiropractic, acupuncture, and  
39 hospital treatment, including nursing, medicines, medical and  
40 surgical supplies, crutches, and apparatuses, including orthotic and

1 prosthetic devices and services, that is reasonably required to cure  
2 or relieve the injured worker from the effects of his or her injury  
3 shall be provided by the employer. In the case of his or her neglect  
4 or refusal reasonably to do so, the employer is liable for the  
5 reasonable expense incurred by or on behalf of the employee in  
6 providing treatment.

7 (b) As used in this division and notwithstanding any other law,  
8 medical treatment that is reasonably required to cure or relieve the  
9 injured worker from the effects of his or her injury means treatment  
10 that is based upon the guidelines adopted by the administrative  
11 director pursuant to Section 5307.27.

12 (c) Unless the employer or the employer's insurer has  
13 established or contracted with a medical provider network as  
14 provided for in Section 4616, after 30 days from the date the injury  
15 is reported, the employee may be treated by a physician of his or  
16 her own choice or at a facility of his or her own choice within a  
17 reasonable geographic area. A chiropractor shall not be a treating  
18 physician after the employee has received the maximum number  
19 of chiropractic visits allowed by subdivision (d) of Section 4604.5.

20 (d) (1) If an employee has notified his or her employer in  
21 writing prior to the date of injury that he or she has a personal  
22 physician, the employee shall have the right to be treated by that  
23 physician from the date of injury if the employee has health care  
24 coverage for nonoccupational injuries or illnesses on the date of  
25 injury in a plan, policy, or fund as described in subdivisions (b),  
26 (c), and (d) of Section 4616.7.

27 (2) For purposes of paragraph (1), a personal physician shall  
28 meet all of the following conditions:

29 (A) Be the employee's regular physician and surgeon, licensed  
30 pursuant to Chapter 5 (commencing with Section 2000) of Division  
31 2 of the Business and Professions Code.

32 (B) Be the employee's primary care physician and has  
33 previously directed the medical treatment of the employee, and  
34 who retains the employee's medical records, including his or her  
35 medical history. "Personal physician" includes a medical group,  
36 if the medical group is a single corporation or partnership  
37 composed of licensed doctors of medicine or osteopathy, which  
38 operates an integrated multispecialty medical group providing  
39 comprehensive medical services predominantly for  
40 nonoccupational illnesses and injuries.



1 (C) The physician agrees to be predesignated.

2 (3) If the employee has health care coverage for nonoccupational  
3 injuries or illnesses on the date of injury in a health care service  
4 plan licensed pursuant to Chapter 2.2 (commencing with Section  
5 1340) of Division 2 of the Health and Safety Code, and the  
6 employer is notified pursuant to paragraph (1), all medical  
7 treatment, utilization review of medical treatment, access to  
8 medical treatment, and other medical treatment issues shall be  
9 governed by Chapter 2.2 (commencing with Section 1340) of  
10 Division 2 of the Health and Safety Code. Disputes regarding the  
11 provision of medical treatment shall be resolved pursuant to Article  
12 5.55 (commencing with Section 1374.30) of Chapter 2.2 of  
13 Division 2 of the Health and Safety Code.

14 (4) If the employee has health care coverage for nonoccupational  
15 injuries or illnesses on the date of injury in a group health insurance  
16 policy as described in Section 4616.7, all medical treatment,  
17 utilization review of medical treatment, access to medical  
18 treatment, and other medical treatment issues shall be governed  
19 by the applicable provisions of the Insurance Code.

20 (5) The insurer may require prior authorization of any  
21 nonemergency treatment or diagnostic service and may conduct  
22 reasonably necessary utilization review pursuant to Section 4610.

23 (6) An employee shall be entitled to all medically appropriate  
24 referrals by the personal physician to other physicians or medical  
25 providers within the nonoccupational health care plan. An  
26 employee shall be entitled to treatment by physicians or other  
27 medical providers outside of the nonoccupational health care plan  
28 pursuant to standards established in Article 5 (commencing with  
29 Section 1367) of Chapter 2.2 of Division 2 of the Health and Safety  
30 Code.

31 (e) (1) When at the request of the employer, the employer's  
32 insurer, the administrative director, the appeals board, or a workers'  
33 compensation administrative law judge, the employee submits to  
34 examination by a physician, he or she shall be entitled to receive,  
35 in addition to all other benefits herein provided, all reasonable  
36 expenses of transportation, meals, and lodging incident to reporting  
37 for the examination, together with one day of temporary disability  
38 indemnity for each day of wages lost in submitting to the  
39 examination.

(2) Regardless of the date of injury, “reasonable expenses of transportation” includes mileage fees from the employee’s home to the place of the examination and back at the rate of twenty-one cents (\$0.21) a mile or the mileage rate adopted by the Director of Human Resources pursuant to Section 19820 of the Government Code, whichever is higher, plus any bridge tolls. The mileage and tolls shall be paid to the employee at the time he or she is given notification of the time and place of the examination.

(f) When at the request of the employer, the employer’s insurer, the administrative director, the appeals board, or a workers’ compensation administrative law judge, an employee submits to examination by a physician and the employee does not proficiently speak or understand the English language, he or she shall be entitled to the services of a qualified interpreter in accordance with conditions and a fee schedule prescribed by the administrative director. These services shall be provided by the employer. For purposes of this section, “qualified interpreter” means a language interpreter certified, or deemed certified, pursuant to Article 8 (commencing with Section 11435.05) of Chapter 4.5 of Part 1 of Division 3 of Title 2 of, or Section 68566 of, the Government Code.

(g) If the injured employee cannot effectively communicate with his or her treating physician because he or she cannot proficiently speak or understand the English language, the injured employee is entitled to the services of a qualified interpreter during medical treatment appointments. To be a qualified interpreter for purposes of medical treatment appointments, an interpreter is not required to meet the requirements of subdivision (f), but shall meet any requirements established by rule by the administrative director that are substantially similar to the requirements set forth in Section 1367.04 of the Health and Safety Code. The administrative director shall adopt a fee schedule for qualified interpreter fees in accordance with this section. Upon request of the injured employee, the employer or insurance carrier shall pay for interpreter services. An employer shall not be required to pay for the services of an interpreter who is not certified or is provisionally ~~certified by the person conducting the medical treatment or examination~~ *qualified* unless either the employer consents in advance to the selection of the individual who provides the interpreting service or the injured worker requires interpreting service in a language other than the

languages—~~provided~~ *designated* pursuant to Section ~~11435.30~~  
~~11435.40~~ of the Government Code.

(h) Home health care services shall be provided as medical treatment only if reasonably required to cure or relieve the injured employee from the effects of his or her injury and prescribed by a physician and surgeon licensed pursuant to Chapter 5 (commencing with Section 2000) of Division 2 of the Business and Professions Code, and subject to Section 5307.1 or 5703.8. The employer shall not be liable for home health care services that are provided more than 14 days prior to the date of the employer's receipt of the physician's prescription.

~~SEC. 10.~~

SEC. 9. Section 4620 of the Labor Code is amended to read:

4620. (a) For purposes of this article, a medical-legal expense means any costs and expenses incurred by or on behalf of any party, the administrative director, or the board, which expenses may include X-rays, laboratory fees, other diagnostic tests, medical reports, medical records, medical testimony, and, as needed, interpreter's fees by a certified interpreter pursuant to Article 8 (commencing with Section 11435.05) of Chapter 4.5 of Part 1 of Division 3 of Title 2 of, or Section 68566 of, the Government Code, for the purpose of proving or disproving a contested claim.

(b) A contested claim exists when the employer knows or reasonably should know that the employee is claiming entitlement to any benefit arising out of a claimed industrial injury and one of the following conditions exists:

(1) The employer rejects liability for a claimed benefit.

(2) The employer fails to accept liability for benefits after the expiration of a reasonable period of time within which to decide if it will contest the claim.

(3) The employer fails to respond to a demand for payment of benefits after the expiration of any time period fixed by statute for the payment of indemnity.

(c) Costs of medical evaluations, diagnostic tests, and interpreters incidental to the production of a medical report do not constitute medical-legal expenses unless the medical report is capable of proving or disproving a disputed medical fact, the determination of which is essential to an adjudication of the employee's claim for benefits. In determining whether a report meets the requirements of this subdivision, a judge shall give full

1 consideration to the substance as well as the form of the report, as  
2 required by applicable statutes and regulations.  
3 (d) If the injured employee cannot effectively communicate  
4 with an examining physician because he or she cannot proficiently  
5 speak or understand the English language, the injured employee  
6 is entitled to the services of a qualified interpreter during the  
7 medical examination. Upon request of the injured employee, the  
8 employer or insurance carrier shall pay the costs of the interpreter  
9 services, as set forth in the fee schedule adopted by the  
10 administrative director pursuant to Section 5811. An employer  
11 shall not be required to pay for the services of an interpreter who  
12 is provisionally-~~certified~~ *qualified* unless either the employer  
13 consents in advance to the selection of the individual who provides  
14 the interpreting service or the injured worker requires interpreting  
15 service in a language other than the languages-~~provided~~ *designated*  
16 pursuant to Section ~~11435.30~~ *11435.40* of the Government Code.